

## **Remarks**

### **1. Summary of the Office Action**

In the final office action mailed May 14, 2008, the Examiner rejected claim 31 under 35 U.S.C. § 112 as lacking antecedent basis for the term "the client station." In addition, the Examiner rejected claims 13-16, 18-27, and 30-33 under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Patent Application 2002/0013844 (Garrett), although the Examiner inadvertently excluded claims 31-33 from the summary statement of the rejection on page 3 of the office action. Further, the Examiner rejected claims 17, 28, and 29 under 35 U.S.C. § 103(a) as being allegedly obvious over Garrett in view of U.S. Patent No. 6,339,761 (Cottingham).

### **2. Status of the Claims**

Applicant has corrected a clear typographical error in claim 31, where the claim referred to "the client station" instead of "the subscriber." Applicant submits that the intended meaning was clear and that this correction should not preclude consideration of the following remarks. Applicant also notes that a subscriber can properly be interpreted to comprise a client station.

Pending are claims 13, 17-25, and 28-33, of which claims 13, 21, and 23 are independent and the remainder are dependent.

### **3. Response to Rejections**

Applicant submits that the Examiner clearly erred in rejecting the independent claims as being anticipated by Garrett, because Garrett does not expressly or inherently teach the subject matter recited by any of the independent claims as would be required to properly establish anticipation under M.P.E.P. § 2131. Therefore, Applicant respectfully requests reconsideration and allowance of the claims.

The following discussion will focus on independent claim 13 by way of example. Applicant submits that largely the same reasoning applies with respect to the other claims as well.

The invention as recited by claim 13 involves receiving from a subscriber on an access network an authentication request designating a service provider, sending the request to the designated service provider, receiving from the designated service provider an authentication response indicating successful authentication and including a service qualification, responsive to the authentication response assigning the subscriber to operate in a designated layer of the access network set aside for subscribers that have been authenticated by the designated service provider and to operate according to the service qualification, and serving the subscriber in the designated layer including handling communications with the subscriber according to a logic set established for the designated layer, wherein handling communications with the subscriber according to the logic set established for the designated layer comprises disallowing a predetermined type of communication from passing from the subscriber to outside of the access network.

Considering the scope of this claim as a whole, it is clear that the claim requires (i) positive authentication by the service provider and then, (ii) in accordance with the authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network. This combination of elements, in the context of claim 13, is not taught expressly or inherently by Garrett. Therefore, Garrett does not anticipate amended claim 13.

The error in the Examiner's rejection is readily apparent from the Examiner's "Response to Arguments" section.

In the "Response to Arguments" section, the Examiner stated that "Applicant argues that Garrett does not teach (i) positive authentication, and (ii) disallowing a predetermined type of communication from passing from the subscriber to outside of the access network." That statement by the Examiner, however, oversimplifies and incorrectly characterizes Applicant's position. More accurately as noted above, Applicant argued (and argues) that Garrett fails to teach (i) positive authentication by the service provider and then, (ii) *in accordance with the authentication response*, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network. A careful review of Garrett confirms that Garrett fails to expressly or inherently teach this subject matter.

In the "Response to Arguments" section, the Examiner noted that Garrett discloses at paragraphs 0041 and 0043 the idea of differentiating services for different subscribers by limiting service communication via policies and type-of-service, which designates service classes. The Examiner then asserted that "[t]his sort of differentiating between services *inherently* involves disallowing certain types of communication because each subscriber only has a limited number of services which they are granted access to." (Emphasis added.) A review of Garrett reveals, however, that Applicant's claimed invention is not taught either expressly or inherently by Garrett.

First, Garrett clearly does not *expressly* teach the claimed subject matter including the feature of (i) positive authentication by the service provider and then, (ii) in accordance with the positive authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network. Further, the Examiner has not pointed to any such express teaching in Garrett.

The only portions of Garrett that the Examiner has cited in relation to this feature of Applicant's claim are paragraphs 0026, 0041, and 0043. However, none of those paragraphs or any other aspect of Garrett expressly teach the claim feature.

As Applicant noted in the last response, paragraph 0026 of Garrett relates to denial of packet transmission if the source address in the packet does not match any of the addresses allocated to subscribers of a first service provider or any other addresses allocated to subscribers of a second service provider. That teaching in Garrett thus involves disallowing packet transmission in response to the source client station *not* having an IP address associated with a service provider. Therefore, the teaching in Garrett clearly relates to a situation where the source client station has *not* been authenticated (or the like) by any of the service providers and thus does not have an IP address associated with any of the service providers. As a result, the teaching of Garrett clearly does not expressly involve Applicant's claim feature of ***in accordance with the authentication response (which provides positive authentication), disallowing a predetermined type of communication from passing from the subscriber to outside of the access network.***

Claim 13 involves disallowing a predetermined type of communication from passing from the subscriber to outside of the access network *in accordance with the positive authentication response*. With Garrett's teaching, the denial of packet communication occurs when there has been no authentication or, more particularly, when the client station's assigned IP address is not one associated with any of the service providers. Clearly, this does not expressly involve Applicant's claim feature.

Paragraphs 0041 and 0043 of Garrett, on which the Examiner relied in the final office action, also do not expressly teach the feature of (i) positive authentication by the service

provider and then, (ii) in accordance with the positive authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network.

Paragraph 0041 of Garrett teaches that access network infrastructure should support quality-of-service differentiation between subscribers to different service providers. In particular, the paragraph teaches by example that a subscriber to one service network could get a higher share of access link capacity in the access network than a subscriber to another service network, or that the aggregate capacity for subscribers to one service network could be different than the aggregate capacity for subscribers to another service network. The paragraph then teaches that the access network may accomplish this through use of a policy decision point, such as a server in the activation system 160, which makes the policy decision upon authentication of a subscriber, upon which the service class assignment is made. This paragraph of Garrett does not expressly state anything about *in accordance with the positive authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network*.

Paragraph 0043 of Garrett teaches an example of the policy decision point arrangement described in paragraph 0041. In particular, paragraph 0043 (together with paragraph 0042) describes a scenario where a PC acquires an IP address through DHCP, the DHCP server directs a policy decision point to assign a particular service class to the subscriber, the policy decision point transmits traffic parameters for the authorized service to a cable modem termination system (CMTS), and the CMTS begins assigning a service flow with a corresponding quality of service to the PC's cable modem. According to paragraph 0043, the cable modem can mark outbound packets with a DiffServ type-of-service (TOS) indication and can ensure that TOS field is

properly marked even if the PC does not include the proper TOS value, and the CMTS can take similar action in the downstream direction. This teaching of paragraph 0043 (and 0042), however, does not expressly state anything about *in accordance with the positive authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network*.

Furthermore, the cited paragraphs of Garrett clearly do not ***inherently*** disclose Applicant's claim feature of (i) positive authentication by the service provider and then, (ii) in accordance with the positive authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network. Further, the Examiner has not pointed to any such express teaching in Garrett.

According to M.P.E.P. § 2112, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. Rather, in order to establish that a feature not expressly taught by a prior art reference is ***inherently*** disclosed by the prior art reference, an Examiner must establish that the allegedly inherent feature ***necessarily*** flows from the teachings of the reference. M.P.E.P. § 2112. In this case, the Examiner has not met that burden and has therefore not properly established anticipation through inherency. Ultimately, Applicant's claim feature of *(i) positive authentication by the service provider and then, (ii) in accordance with the positive authentication response, disallowing a predetermined type of communication from passing from the subscriber to outside of the access network* does not necessarily flow from the limited teachings of Garrett and is therefore not inherent in Garrett's teachings.

Applicant's claim feature is clearly not inherent in the teaching of paragraph 0026 of Garrett, as the claim feature does not necessarily flow from Garrett's teaching that packet filtering can be done to prevent communication from un-authenticated IP addresses.

Applicant's claim feature is also clearly not inherent in the teaching of paragraphs 0041-0043 of Garrett, as the claim feature does not necessarily flow from Garrett's teaching that service differentiation in terms of type of service or quality of service can be imposed by a policy decision point. It is entirely plausible, and indeed likely given Garrett's teaching in paragraph 0041, that Garrett's policy decision point would impose *access link capacity limitations* on subscribers of one service network as compared with subscribers of another service network. However, it does not necessarily follow from that, or from the general concept of service differentiation, that the policy decision point or other entity disclosed by Garrett would, in accordance with the positive authentication response with respect to a given subscriber, disallow a predetermined type of communication from passing from the subscriber to outside of the access network as recited in Applicant's claims. The general concept of service differentiation does not necessarily involve Applicant's claim feature. Consequently, under M.P.E.P. § 2112, the claim feature is not inherent in Garrett's teaching of paragraphs 0041-0043.

For these reasons, Applicant submits that the invention recited in Applicant's independent claims is not expressly or inherently disclosed by Garrett, and that the Examiner has thus clearly erred in rejecting the independent claims as being anticipated by Garrett. Therefore, Applicant submits that the independent claims are allowable. Furthermore, without conceding the Examiner's other assertions, Applicant submits that the dependent claims are allowable as well for at least the reason that they each depend from an allowable independent claim.

Applicant thus respectfully requests reconsideration and allowance of the claims.

Should the Examiner wish to discuss this case with the undersigned, the Examiner is welcome to call the undersigned at (312) 913-2141.

Respectfully submitted,

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